

# MINUTES OF ROANOKE CITY AUDIT COMMITTEE

April 4, 2005

## 1. CALL TO ORDER:

The meeting of the Roanoke City Audit Committee was called to order at 11:12 a.m. on Monday, April 4, 2005, with Chair, Dr. M. Rupert Cutler, presiding.

- **The roll was called by Mrs. England**

### **Audit Committee**

**Members Present:** Dr. M. Rupert Cutler, Chair  
Mayor C. Nelson Harris  
Vice-Mayor Beverly T. Fitzpatrick, Jr.  
Alfred T. Dowe, Jr. (arrived late)  
Sherman P. Lea  
Brenda L. McDaniel  
Brian J. Wishneff (arrived late)

**Others Present:** Drew Harmon, Municipal Auditor  
Darlene L. Burcham, City Manager  
William M. Hackworth, City Attorney  
Jesse A. Hall, Director of Finance  
George C. Snead, Jr., Asst. City Manager for Operations  
Rolanda B. Russell, Asst. City Manager for Community Development  
Larry Brown, Public Information Officer  
Gwin Ellis, Assistant to the City Manager  
Greg Emerson, Chief Deputy Commissioner of Revenue  
Patrick Woods, Business License Inspector/Auditor  
Mike Tuck, Assistant Municipal Auditor  
Pamela Mosdell, Information Systems Auditor  
Brian Garber, Senior Auditor  
Cheryl Ramsey, Auditor  
Doris England, Administrative Assistant  
Todd Jackson, The Roanoke Times  
Reporter, WDBJ-TV Channel 7  
Cameraman, WDBJ-TV Channel 7  
Evelyn Bethel, Citizen  
Helen Davis, Citizen

## 2. INTERNAL AUDIT REPORTS:

- A. Clerk of the Circuit Court
- B. Commissioner of the Revenue
- C. Police Department Cash Funds

Dr. Cutler ordered that internal audits A through C be received and filed. There were no objections to the order. Dr. Cutler recognized Mr. Harmon for comments on each of the audits beginning with the Clerk of the Circuit Court.

Mr. Harmon stated the Clerk of the Circuit Court audit is one that is performed every year by Municipal Auditing, and it is done in cooperation with the Virginia Auditor of Public Accounts (APA). The APA is required to audit the Clerk of the Circuit Court each year, and the city provides services in lieu of being charged by the state for the audit. Municipal Auditing followed the APA's program, and did not have any material findings. The state has not issued the final report on the audit. When that report is received, it will be brought before the Audit Committee. Mr. Harmon asked if there were any questions regarding the audit.

Dr. Cutler commented that the APA is a state agency, and the city is saving money by performing its portion of the audit. He also asked Mr. Harmon if this was considered a clean audit, and Mr. Harmon replied that it was. Chairman Cutler asked for any questions or comments from the committee members. There being none, he asked Mr. Harmon to proceed to Item B on the agenda, the Commissioner of the Revenue audit report.

Mr. Harmon asked Mr. Emerson, Chief Deputy Commissioner of Revenue, if he would like to address the committee regarding the audit. Mr. Emerson stated the Commissioner of Revenue, Mr. Holland, could not attend the committee meeting due to a long-standing commitment. He said in regards to comments made or about to be reviewed, he wanted to assure the members of the Audit Committee that the Commissioner's office was confident it could provide any clarification in context with its tax systems. Mr. Emerson stated the systems were working properly and in accordance with state law. He asked Chairman Cutler if the Commissioner's office could be allowed an opportunity to respond in writing, and Dr. Cutler replied he thought that would be in order and to please do so.

Mr. Harmon said he would like to give some background information involving the timeline on the Commissioner's audit. He met with Mr. Holland and Mr. Emerson in April 2004 for an opening conference. At that time, he presented an overview of the audit and areas he expected to examine. He asked for copies of the business plan, job descriptions, and policies and procedures, which is standard in gathering information about an audit area. Mr. Harmon stated he then spent about two weeks interviewing staff members about their job duties and any documented procedures. At that time, personal property assessments were out and it was time for those payments to come in during May, so the audit was suspended until after that busy time. Mr. Harmon had done some initial planning and expressed concern about the lack of procedures and a business plan.

The staff of Municipal Auditing also became very busy, and it was in late December that Mr. Harmon assigned Mike Tuck, Assistant Municipal Auditor, to resume the audit. By January, Mr. Tuck was doing the planning and modeling

the process of what the department does. The audit focused on tax compliance, the area thought to have the most risks. By mid February, the mapping of processes was finished; there were no documented procedures, and processes were limited in the tax compliance area. Many of the recommended practices, such as running data queries and doing field audits, were not being done. There were also no audit programs, no processes for doing field audits, and evaluating data. Municipal Auditing again expressed concern that written procedures were not in place and that there may not be enough staff in the Commissioner's office to do the work needed related to tax compliance. Municipal Auditing staff began examining the data in mid February.

By the first of March, Municipal Auditing staff went over the exceptions found in the data with the Commissioner's staff. The findings and numbers were presented and were agreed to by the Commissioner's staff.

On March 21, 2005, a draft of the audit report was sent to the Commissioner's office. There had been prior meetings and e-mails communicating the status of the report. Mr. Harmon said he requested a meeting be held with the Commissioner to discuss a response to the report. The meeting was not scheduled although several e-mails were sent and a personal phone call made in efforts to set up the meeting. The Commissioner's office asked for additional time before the report was presented to the Audit Committee. Mr. Harmon explained that, basically, his department was not allowed to delay a report unless there was a significant discrepancy or disagreement.

Mr. Harmon said he would like to go over the results of the audit report and highlight the findings beginning with Finding 01, Organization and Procedures. He stated a business plan is necessary to indicate the responsibilities of the department. The tax code at the local level is quite complex and without a business plan stating the law, the intricacies of the law, and how it is going to be processed, it would be very difficult for staff members to know what they should be doing.

Mr. Harmon presented an annual report from Norfolk, Virginia, that he had downloaded from the Internet (copies were distributed later to the committee members). In this, he stated, there were parts of a business plan including the mission statement, how the office was organized and what the office did. The report also explained how the data was trending and why it was different from the prior year.

Mr. Harmon explained that most of the recommendations made by Municipal Auditing in its audit report came from the Commissioners of the Revenue Association and the Virginia Association of Local Tax Auditors. These are recommendations from commissioners of the revenue.

Mr. Harmon proceeded to Finding 02, Business Personal Property, stating that the data was very complex. Out of 27,000 records (downloaded from business personal property accounts for tax years 2002, 2003, and 2004), 14,000

records had zero values indicating there was no report of any business personal property. Also, the city did not address the accuracy of those that did report given that field audits are not done by the Commissioner's office. The 14,000 records represent approximately 7,600 businesses that did not file business personal property tax. These were examined in greater detail, and it was found that 1,900 did not have business personal property filed in any of the three years. Mr. Harmon explained that some of the data should not have been in the system; those not filing personal property should have been taken out. Municipal Auditing staff selected a judgmental sample of 50 businesses that appeared to be legitimate. Of those 50 businesses, indications were that 27 should have filed business personal property for at least one year and some for all three years. Mr. Harmon stated that field audits need to be done to determine if people are filing appropriately; and when they do not file or respond to letters, the Commissioners Association recommends that those businesses be audited.

On Finding 03, DMV Audit, Mr. Harmon explained that the DMV sends a file weekly showing deletions and additions to all vehicles in the city. The system loads the data and the Commissioner's staff must make adjustments; for example, a county vehicle may be listed in error as a city vehicle. However, that report has been turned off up to six months of the year, so the Commissioner's office is missing personal property changes. Municipal Auditing staff examined cars purchased from January through September 2004; there were 3,800 cars purchased. A random sample of 50 of these was taken and 14, or 28%, were found to be assessable. In fact, the Commissioner's office assessed those vehicles after Municipal Auditing staff brought it to their attention. The DMV states there are 90,000 vehicles in the city, which is not exactly correct because some are rental or corporate owned vehicles that are taxed in another manner.

Mr. Harmon explained that with Finding 04, Business License Tax, Municipal Auditing staff did not find a significant number of businesses not licensed. Six major streets were chosen in the test and summarily, only one of 191 businesses was found that the Commissioner's office did not have. There are five others that Municipal Auditing is waiting to hear about. However, if there is only one or two percent, that would represent an issue. A larger issue is gross receipts, which were not addressed in any way. Mr. Harmon stated that businesses, by error or by intent, will not file correct returns. It is part of the Commissioner's charge to ensure accurate returns are filed.

Mr. Harmon stated the Sales Tax Audit is impacted by the Commissioner's office in that the office is responsible for reviewing it, though it does not assess it. It is recommended the Commissioner's office compare the sales tax report (to the business license applications) to be sure everyone who has a license in the city is remitting sales tax as a city business.

Mr. Harmon concluded his comments on the audit report and asked for questions from the committee members. Mr. Wishneff asked which finding would need to be addressed first if the findings were prioritized. Mr. Harmon

replied it would be the business personal property tax. He further stated that one of the easier findings to address would be to run the DMV report and determine the missing personal property.

Ms. McDaniel stated that she read the authority for having a Commissioner of Revenue comes from the state constitution, and she asked if that meant the city must have a Commissioner of Revenue. Mr. Harmon referred that question to City Attorney, Mr. Hackworth. Mr. Hackworth said it is a constitutional requirement to have a Commissioner of Revenue. He further explained there is a statutory process that a locality can go through to eliminate the office of the Commissioner or Treasurer. It begins with a citizen initiation process, then a petition to the Circuit Court, a referendum, and the General Assembly has to adopt legislation to abolish the office. Taking its place would be whatever was provided for in the referendum. Mr. Hackworth said he knew of no locality in recent memory where one of these referendums was successful.

Ms. McDaniel noted that on previous audits after the issue was stated there followed an agreed upon action. She asked if that was due to a collaborative effort with the department being audited and if that was what Municipal Auditing did not receive from the Commissioner's office. Mr. Harmon replied that it was. In this case, he said he wanted to discuss the report but did not get any feedback and did not hear from the Commissioner at all after sending him the report. Mr. Lea stated he felt confident Mr. Holland would respond in writing to the report. He then asked Chairman Cutler what the role of the Council was in this matter and if the Council could ask the Commissioner to respond. Dr. Cutler referred this question to Mr. Hackworth, who responded that as far as performance of the constitutional officer, there is little the governing body can do. The efforts of the governing body would have to be indirect rather than direct. Mr. Hackworth said there is no legal responsibility or oversight of the governing body over any constitutional officer.

Dr. Cutler asked Mr. Emerson when the Audit Committee could expect a written response. Mr. Emerson asked what date would be agreeable to the committee, and Dr. Cutler replied the committee would like a response soon. Mr. Harris suggested the Audit Committee meet again the first meeting in May, thus giving the Commissioner of Revenue one month to respond. Chairman Cutler suggested the written report be submitted in three weeks so it could be included in the packet of information provided to Audit Committee members to review prior to the meeting.

Mr. Wishneff asked if there would be budget consequences as far as cost. Chairman Cutler then asked the Municipal Auditor if he could give the committee a ballpark estimate of the impact on city revenue of the shortcomings identified in the audit in terms of loss of revenue in recent years. Mr. Harmon stated there was no way to give a good estimate, but \$500,000 to \$1,000,000 a year would not be beyond reason. Mr. Lea said he thought we should be careful about stating those numbers because we want to be sure they are correct. Mr. Wishneff said the basis of his question was for the cost side as

much as the revenue side given the budget was coming up in May, and there may be some recommendations. Ms. Burcham stated that she hoped if there were a need for additional staff in the Commissioner's office, there would be commensurate revenue generated in excess of that need. Therefore, the Council should not be bound by the budget process because it could meet again and make that adjustment.

Mr. Dowe stated he would like to hear from the Commissioner's office in its response at the May meeting of some immediate things that could be done. Specifically, he mentioned the need for field audits and how many people were in place to do the audits. He stated he felt a business plan would be critical, and he agreed with Mr. Lea that support should be provided. He said the function of audits is not to exploit things but to help support and show areas of weaknesses that the Audit Committee, as an organized body, could provide direction for. Mr. Harmon stated his office would be glad to work with the Commissioner in any way it could.

Chairman Cutler called on Mr. Fitzpatrick for his comments. Mr. Fitzpatrick thanked Mr. Emerson for being there because he knew it must be tough for him. He said he was disappointed by what he had read in the report and felt this was an integrity issue with some people being taxed and others not being taxed. He said that, as an elected official, he was sitting at a policy level with people that he had no real control over who were not applying policy equitably across the city. Mr. Fitzpatrick stated the irony of this issue was this was not the first commissioner who had been in a similar situation, so this was not aimed at Mr. Holland. He explained this may be an overall sense of direction that has been in this office since long before the current incumbent. He said if the report was true, it was a disservice to the citizens of the City of Roanoke. Mr. Fitzpatrick said the point was to ask people to pay for city services and to make sure each one paid his fair share, which was clearly in doubt at the moment. He said the response from Mr. Holland and Mr. Emerson would be critical to whether Council has the confidence that it should have in the Commissioner's office. He stated the fact that the Commissioner's office did not return the Municipal Auditor's phone calls or e-mails was a red flag, and he felt it was inappropriate. Mr. Fitzpatrick encouraged Mr. Holland and Mr. Emerson to provide information as quickly as they could so the Audit Committee members could have a better understanding of this audit report. He explained the state is getting ready to cap the city and that will determine how much money the city will get in the future. Roanoke needs to have the best equitable tax situation in place or it could lose millions of dollars over the next 20 years because of the state's new policy. Mr. Fitzpatrick said he had never seen Mr. Harmon or his predecessor make unfavorable remarks without having facts, so he does not have any reason to believe that at this point.

Mr. Harris said it should be kept in mind that the function of the Municipal Auditor and audits is not to be punitive but to be corrective. With past situations where there have been findings, the corrective action has been taken. He said he had heard no objection to having another Audit Committee meeting

at the first meeting in May, so he assumed that would be what the committee would do. This would give Mr. Holland and his staff the opportunity to make some preliminary response and provide a plan of action to address what had been discussed. Mr. Harris said he did not feel it would be realistic to expect a business plan from the Commissioner's office in three weeks, so the Audit Committee could receive that during its regular calendar schedule.

Chairman Cutler announced that there seemed to be no objection to asking the Commissioner's office to provide a written response in about three weeks and the Audit Committee could meet again a month from now to review that response. Mr. Harris said he would like to add that he and probably other Council members will be looking for a response that is somewhat in line with the way other departments respond, which is an agreed upon course of action.

Dr. Cutler introduced the next item on the agenda, the Police Department Cash Funds audit, and asked Mr. Harmon for comments. Mr. Harmon stated that this was also an annual audit which Municipal Auditing does. There were two findings; one which the Council had seen before, that regarding gold permits. Chief Gaskins had a response to that finding at the back of the audit, and that issue had been rectified with the permits. The financial statements were attached, and there were no significant issues. Mr. Harmon stated he would be glad to answer any questions about the Police Funds. There were no questions.

In review, Chairman Cutler stated that three reports had been received and filed. He asked for any further comments from members of the committee on the reports. There were no further comments.

### **3. UNFINISHED BUSINESS:**

There was no unfinished business to come before the committee.

### **4. NEW BUSINESS:**

There was no new business to come before the committee.

### **6. ADJOURNMENT:**

There being no further business, the meeting was adjourned at 11:55 a.m.

A handwritten signature in dark ink, appearing to read "M. Rupert Cutler", with a long horizontal stroke extending to the right.

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M. Rupert Cutler, Chair